United Nations CRPD/C/KEN/Q/1

Convention on the Rights of Persons with Disabilities

Distr.: General
22 May 2015

Original: English
English, French and Spanish only

Committee on the Rights of Persons with Disabilities

List of issues in relation to the initial report of Kenya*

A. Purpose and general obligations (arts. 1–4)

1. Please indicate what measures are being adopted for comprehensive legal harmonization, including on the concept of disability, and to remove derogatory terms referring to persons with disabilities, such as "unsound mind", "mental incapacity" and "mental infirmity", from its legislation, in particular the 2010 Constitution (art. 83 (1) (b)), the Local Government Act 2010 (part V, para. 53 (c)), the Election Act 2011 (sect. 9) and the Marriage Act 2014 (sect. 11 (2)), in all of which derogatory terms are found.

2. Please provide information about the situation of persons with disabilities who belong to minority communities and indigenous groups and indicate what measures have been taken to ensure that Kenyan disability legislation and policies include and protect them. Please indicate whether the Convention has been translated into Swahili.

3. Please provide information on mechanisms for consultation with organizations of persons with disabilities.

B. Specific rights

Equality and non-discrimination (art. 5)

4. Please clarify whether the provisions to prevent discrimination on the basis of disability are applicable to all persons with disabilities, including persons with intellectual and/or psychosocial disabilities. Please explain the measures taken to ensure non-discrimination of persons with disabilities by private actors, including within families, and to address cultural practices that are discriminatory of persons with disabilities.

Women with disabilities (art. 6)

5. Please provide information on specific measures taken to mainstream the rights of women and girls with disabilities in the work of the National Gender and Equality Commission.

* Adopted by the pre-sessional working group at its third session (20–24 April 2015).

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Children with disabilities (art. 7)

6. Please report on measures taken to guarantee full respect for the views of children with disabilities, including the views of children living in rural areas and children who belong to minority communities, in accordance with article 7 (3) of the Convention.

Awareness-raising (art. 8)

7. Please indicate whether awareness-raising training or campaigns on disability are provided in the civil service, schools, the media and cultural and religious-run institutions, and initiatives are run for the general public, including those working in the private sector.

Accessibility (art. 9)

8. Please provide specific information on the outcomes of the implementation of the comprehensive legal and policy framework on accessibility, including information on the accessibility of health-care facilities.

Right to life (art. 10)

9. Please report on measures taken to protect persons with albinism from abduction and murder and other discriminatory practices; in particular, please inform the Committee of prosecutions and convictions of perpetrators, of training for the police and of awareness-raising and education campaigns for the public to eliminate such practices.

Situations of risks and humanitarian emergencies (art. 11)

10. Please give details of measures taken to protect the rights of persons with disabilities who are victims of internal displacement, in particular those living in refugee camps, throughout the envisaged repatriation process.

Equal recognition before the law (art. 12)

11. Please indicate what steps are being taken to repeal legislation and practices that restrict legal capacity on the basis of impairment and to establish supported decision-making regimes to secure the right to exercise legal capacity, including the right to decide in all areas of life.

Access to justice (art. 13)

12. Please report on measures taken to ensure that all persons with disabilities benefit from access to justice, including legal aid, procedural accommodations and information and communication in accessible formats, including the Kenyan sign language.

Liberty and security of the person (art. 14)

13. What steps are being taken to repeal laws and practices that permit the detention of persons based on actual or perceived impairment/disability, including "unsound mind"?

Freedom of torture or cruel, inhuman or degrading treatment or punishment (art. 15)

14. Please provide information on measures aimed at supporting victims of forced medical treatment. Please describe how the safeguards against forced medical treatment apply to persons with disabilities and how the right to free and informed consent is upheld in the law and practice for individuals and to prohibit substituted consent by a guardian or carer.

Freedom from exploitation, violence and abuse (art. 16)

15. Please inform the Committee of measures taken to address the heightened risks for children and women with disabilities, including refugee women and girls with disabilities, of becoming victims of violence and abuse. What measures are being adopted to ensure that both services (including shelters and helplines) and information for victims are made accessible to women and girls with disabilities?

Protecting the integrity of the person (art. 17)

16. Please indicate what measures are being taken to prohibit and prevent forced sterilization and genital mutilation of women and girls with disabilities in law and in practice.

Liberty of movement and nationality (art. 18)

17. Please inform the Committee of measures taken to ensure that every person with a disability is registered upon birth or at the time that they choose, and given a name and a nationality.

Living independently and being included in the community (art. 19)

18. Please report on measures to prevent the institutionalization of children with disabilities and to monitor the conditions of children in institutions. Please give details on community-based services available for persons with disabilities to live independently in the community.

Personal mobility (art. 20)

19. Please explain whether persons with disabilities living in rural areas have benefited from the assistive devices being provided. Please also report on measures to ensure access to transportation for the public.

Respect for private and family life (art. 23)

20. Please report on measures taken to ensure that children with disabilities currently in orphanages are returned to a family setting and are included in the community. Please also report on the type of support and services that are available to families with children with disabilities to ensure they can be brought up within their families and are empowered to participate in the community.

21. Please explain what measures are being adopted to respect the right of persons with disabilities, especially persons with psychosocial and/or intellectual disabilities, to marry and found a family.

Education (art. 24)

22. Please explain in detail how the State party is working towards inclusive education, in particular for children with high-level support needs. Please also give information on the current status of inclusive education in the education policy.

Health (art. 25)

23. Please explain how the health services sector will scale up mental and psychosocial health-care and treatment services across the country.

24. What programmes are currently in place across urban and rural areas for persons with disabilities, including women and girls, young persons and refugees, concerning sexual and reproductive health, HIV/AIDS and sexually transmissible infections?

Right to work and employment (art. 27)

25. Please provide information on the employment rate of persons with disabilities in the open labour market, and on the implementation of the 5 per cent quota. Please also give information on measures to protect against employment-based discrimination of persons with disabilities.

Adequate standard of living and social protection (art. 28)

26. Please give details of plans to expand the national development fund to benefit all persons with disabilities, and especially people with psychosocial and/or intellectual disabilities in particular from rural areas.

Participation in political and public life (art. 29)

27. Please provide information on any step taken to repeal restrictions to be elected and to vote in the Constitution, in particular sections 83 (1) (b) and 99 (2) (e), in which it is stated that a person can be disqualified from voting and being elected as a Member of Parliament if the person is of "unsound mind".

28. Please explain in detail what the Government is doing to improve physical access to polling stations, as well as ensuring access to election-related information for persons with disabilities.

C. Special obligations

Statistics and data collection (art. 31)

29. Please report on any attempt to update the data-collection system in accordance with the Convention and with the involvement of organizations of persons with disabilities.

International cooperation (art. 32)

30. Please give information on the mechanisms to consult and involve with organizations of persons with disabilities in the design of international cooperation projects and programmes.

National implementation and monitoring (art. 33)

31. Please report on steps taken to establish a national implementation and monitoring mechanism.

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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities
Fourteenth session
17 August–4 September 2015
Item 5 of the provisional agenda
Consideration of reports submitted by States parties under article 35 of the Convention

List of issues in relation to the initial report of Kenya

Addendum

Replies of Kenya to the list of issues*

[Date received: 30 June 2015]

A. Purpose and general obligations (arts. 1–4)

Reply to the issues raised in paragraph 1 of the list of issues (CRPD/C/KEN/Q/1)

1. The Ministry of Labour, Social Security and Services has been in the process of reviewing the Persons with Disabilities Act, 2003 to align it to the Constitution of Kenya 2010 and to capture emerging issues. The Amendment Bill 2014 (which is in Parliament for discussion) adopts a broader definition of disability. Disability means albinism, a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, whether arising from natural or artificial causes, which is irreversible and long-term and which impacts adversely on a person's capacity to participate in the social, economic, cultural or political activities.

2. The Constitution of Kenya 2010 (art. 54) outlaws derogatory language in respect of persons with disabilities. Schedule 6 (art. 7) commands that all laws existing before the constitution and which have not been aligned to it must read and construed as though they were aligned.

Reply to the issues raised in paragraph 2 of the list of issues

3. Article 56 of the Constitution emphasizes protection of persons with disabilities as belonging to minorities and marginalized. The Government has further mandated the National Gender and Equality Commission, which is the body designated to be in-charge of

* The present document is being issued without formal editing.

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special interest groups to ensure persons with disabilities are protected. The Government of Kenya in collaboration with the Department of Foreign and International Development started the Hunger Safety Nets Programme in 2008 in the four poorest and marginalized districts of northern Kenya (Turkana, Marsabit, Mandera and Wajir). The programme was designed to give long-term support through regular cash transfers, to those households most vulnerable to food insecurity. The programme makes deliberate efforts to reach persons with disabilities by giving priority to households that have persons with disabilities during targeting.

4. Kenya is in the process to legislate regulations to protect and promote representation of the marginalized in Parliament, under article 100 of the Constitution of Kenya where disability issues are well taken care of. Furthermore, the process to enact the two-thirds gender rule under article 81 (b) includes disability.

5. Although there are challenges, the Government is working with disability sector through their umbrella organization, United Disabled Persons of Kenya and National Gender and Equality Commission to achieve this. Recently, the Commission has undertaken an audit of inclusion of Persons with disabilities including those marginalized both at the National and County levels. This will give evidence based approach to tackle challenges of inclusion of Persons with disabilities.

6. Furthermore, the Government has introduced 30 per cent reservation of all government procurement to Persons with Disabilities, Women and Youth, through Regulation 21. 1–3 of legal Notice 58 on preference and Reservation. This provides great opportunity if well utilized for inclusion purposes. According to this notice, Persons with Disabilities do not need Bid Bonds in procurement process. Furthermore, Persons with disabilities have been allocated at least 2 per cent which has been ring fenced out of the 30 per cent. No category of the three target groups are allowed to get more than 50 per cent of the 30 per cent.

7. In addition, through the recently devolved county system of government, each county is expected to address the concerns of persons with disabilities within their jurisdiction. This will be done through the county assemblies in which persons with disabilities are represented and expected to raise concerns of persons with disabilities within the county be they from the marginalized, minority or indigenous. Monitoring of this is being put into place through the representation of the National Council of Persons with Disabilities in each of the counties.

8. There is no official Swahili version of the Convention on the Rights of Persons with Disabilities. English being the official language in the country, most people are able to read it and therefore, there has not been much justifiable demand for translating the Convention into Swahili, however, the United Republic of Tanzania has translated the Convention into Swahili. As an East African Country, we share the same Kiswahili standard with the United Republic of Tanzania and therefore as a country we saw it not necessary to duplicate but adopt the same publication.

Reply to the issues raised in paragraph 3 of the list of issues

Article 10 of the Constitution on national values, emphasizes participation of people where Persons with Disabilities are included.

9. The Government has designated the Ministry of Labour, Social Security and Services the mandate to handle matters of disability. The Ministry has set aside a division within one of its major departments to specifically coordinate disability programmes including issues of the Convention on the Rights of Persons with Disabilities.

10. The Government works closely with disabled persons organizations and involves them directly through their umbrella organization, known as United Disabled Persons of Kenya, to ensure systematic communication. The organization is housed in the government building currently at no cost.

11. Disabled persons organizations are directly involved in all national undertakings on disability including on programme and policy matters where they also work closely with the National Council For Persons with Disabilities, a semi-autonomous State agency responsible for implementing disability programmes.

12. Furthermore, the process of consultation of Persons with disabilities through the Constitution Implementation Commission on the Persons with Disability Amendment Bill is a great platform for reaching Persons with disabilities.

13. In addition, the preparation of briefs for the annual States Parties Conference in New York is done jointly with persons with disabilities both through their individual and disabled Persons organizations level. Furthermore, the Government has employed regional coordinators for the National Council For Persons with Disabilities to reach out to the public at the lowest level of Governance. It however, remains a challenge to involve all disabled persons organizations especially those who are not members of the Umbrella body and also the grassroots ones in national issues.

B. Specific rights

Equality and non-discrimination (art. 5)

Reply to the issues raised in paragraph 4 of the list of issues

14. Article 27 (4) of the Constitution protects persons with disabilities against discrimination. There are still some challenges especially in tax exemption for persons with psychosocial disabilities and consultation are ongoing spearheaded by National Gender and Equality Commission together with relevant organizations to ensure all disabilities are treated the same and not as a medical condition. For private organization, the ongoing persons with disabilities amendment Bill 2012 include private actors. Furthermore, the constitution under article 20 says bill of rights applies to all law and binds all State organs and all persons. The definition of Persons under article 260 refers to private entities, so private entities are covered under constitution and should not discriminate against persons with disabilities.

15. The Government, through relevant institutions, including the National Gender and Equality Commission, the United Disabled Persons of Kenya, the National Treasury, the Kenya Revenue Authority, the National Council for Persons with Disabilities and the Ministry of Labour, Social Security and Services, continues to hold discussions towards an objective criterion within the spirit of the Persons with Disabilities (2003) Act and the constitution on tax relieve as a means to address marginalization of persons with disabilities.

16. Joint effort between the Government and disability organizations continue to be stepped up to enforce equal treatment of psychosocial disability through both the implementation of the law and systematic awareness to ensure no discrimination of persons with disabilities of any type including those with psychosocial disability.

Women with disabilities (art. 6)

Reply to the issues raised in paragraph 5 of the list of issues

17. Women with disabilities continue to be singled out as a special target among the Persons with disabilities. The National Gender and Equality Commission has been assigned the mandate by the Government to address this group especially in such discussions as political participation. In the ongoing discussions on the two-thirds gender rule which is provided for in the Constitution of Kenya, 2010 women with disabilities have been included.

Children with disabilities (art. 7)

Reply to the issues raised in paragraph 6 of the list of issues

18. The government officers working with children (Children Department) have been trained to handle issues of children with disabilities including communicating with Children with Disabilities and also reporting on the same. Recently the National Council for Persons with disabilities has recruited officers and posted them to all Counties to ensure issues of disabilities including those concerns of children in all regions in the country areas can be addressed.

19. Furthermore, National efforts towards improving provision of educational services, assistive devices and rehabilitation and medical facilities / services are seen in the funding of the devices for schools through the National Council for persons with disabilities.

20. Involvement of children in general and more specifically those with disabilities in decision making is a very new concept and more work is needed on this. This will also call for working very closely with parents, groups and associations.

21. All children inclusive those with disability have a right to the highest level of standards of health care. Parents and guardians have the first obligation to ensure that the children's health is assured. In addition, under the government support, all children below 5 years of age are managed free of charge in public facilities. Preventive measures such as immunization are free in public facilities and highly subsidized in private facilities. Clinics for those with disability are provided in every health facility.

22. The Ministry of Health is responsible for the assessment of persons with disability for registration purpose. This is important to enable them access available social protection benefits.

23. This is well addressed in article 73 and article 53 which covers the issues children both with disabilities and those without.

Awareness-raising (art. 8)

Reply to the issues raised in paragraph 7 of the list of issues

24. The Government has established a team of officers both at the Ministry of Labour, social Security and Services and the National Council For Persons with Disabilities who go around public institutions (Ministries, Departments and Agencies) to train and sensitize staff on disability mainstreaming. The officers also provide the services to colleges, Media houses and religious institutions. Regional disability officers utilize the public forums organized by the Provincial Administration (Chief's Barazas) to pass disability messages to the public. Plans are under way to reach out to the private sector as well in the near future.

25. Training of Trainers have been trained on disability mainstreaming and many other organizations including disabled persons organizations and consultancy institutions have taken on this positively and a larger percentage of staff in public institutions are highly informed on the rights of persons with disabilities.

26. Furthermore, the National Council for persons with disabilities, in collaboration with Ministry of Labour, Social Security and Services, which is responsible for disability and disabled people's organization, have been working on a plan of action for the Convention on the Rights of Persons with Disabilities that, among other things, includes awareness-raising with specific focus on national accessibility. The plan is about to be launched and this will mobilize all stakeholders in the area of awareness.

Accessibility (art. 9)

Reply to the issues raised in paragraph 8 of the list of issues

27. A National Action Plan on Accessibility Rights has been developed and it is awaiting to be launched. It provides a strategy for inclusion of persons with disabilities in development and translating existing policy and legal framework into practice. It is as a result of a National stakeholder's conference on Disability Rights for implementation by stakeholders to enhance accessibility for persons with disabilities. The development of this Action Plan is very timely since it coincided with the development of the Second Kenya Medium-Term plan (for Vision 2030) for the period 2012–2017, one of the guiding principles for development in Kenya.

28. Furthermore, in the Health Sector, over hundred (100) Nurses have been trained in sign language to ensure increased access to health services by deaf patients. Most health facilities have erected ramps where there were none or ensured new buildings in hospitals are accessible.

29. The disability act and its consequent proposed amendment gives a major consideration to issue of access bearing in mind the Convention on Rights of Persons with Disabilities and the constitution of Kenya 2010 section 54.

Right to life (art. 10)

Reply to the issues raised in paragraph 9 of the list of issues

30. The Country observed the International Albinism Awareness day on 13 June 2015. As a country, we are working on improving systems that address threatening cases targeting Persons with albinism. Kenya through its constitution has legislated the protection for all citizens and given that the same constitution provides for non-discrimination, Persons with albinism are part of those protected through this legal framework. However, given their recent targeting, the Government has taken it upon itself to enforce the protection of the lives of Persons with albinism.

31. The Government continuously supports efforts towards awareness raising on issues of albinism. Albinism organizations have been financially supported through government funding to undertake awareness activities given the fears associated with it, where Persons with Albinism may not trust any other person. The Government introduced a programme to support Persons with Albinism through provision of sunscreen lotion for skin protection from cancerous sun rays. Additionally, special clothing is being acquired to enhance the protection.

32. The Government and Albinism organizations have also been working together with the Media to educate the public on the rights of Persons with Albinism. Continuous campaigns by the Government and Persons with Albinism organizations has raised awareness to a relatively higher level.

33. Persons with albinism have been trained to know how to protect themselves from abduction among other threats. They are also advised not to walk out at night and to avoid walking alone and avoiding some areas identified as dangerous.

34. Persons with Albinism who are professionals and are employed near border with the United Republic of Tanzania, which is known to be highly risky have been given a chance to transfer and move to the interior of the Country, Kenya.

35. Persons with albinism have been empowered to educate and share information with persons without albinism to reduce stigma and misconception on albinism. Relevant government and religious agencies are aware of number of persons with albinism within their areas of operation so as to protect Persons with albinism and report cases of threat.

36. Persons with Albinism organizations have been funded by the Government to sensitize police to protect Persons with albinism and deal with threats to them. The same training has been extended to both national and county government officers operating in Counties. This has just started in some counties and is set to move to all counties.

Situations of risks and humanitarian emergencies (art. 11)

Reply to the issues raised in paragraph 10 of the list of issues

37. **Kenya actively participated in the 3rd World conference on disaster Risk reduction held in Sendai, Japan, in March, 2015.** H. E the President of Kenya represented the Government of Kenya. The president recognized that, Women Children and Persons with Disabilities are at a great risk during disaster. Kenya alongside other States members of the United Nations endorsed the Sedai Framework for Disaster Risk Reduction 2015–30. Kenya also committed to implement plans to mainstream disaster risk reduction in all its plans, programmes and budgets and other processes.

38. Kenya has been working very closely with non-State actors such to address issues of persons with disabilities during risky situations including in refugee camps. The Government of Kenya in collaboration with the Kenya Red Cross, Christian Bliden Mission and Association of the Physically disabled a local NGO have developed **a manual for mainstreaming disability in Disaster and Emergency Response: A guide for field workers**. The guide provide guidance on the design of an inclusive emergency response to be used by the Government, Kenya Red Cross volunteers and other parties involved in disaster risk and management in order to address Persons with Disabilities.

Equal recognition before the law (art. 12)

Reply to the issues raised in paragraph 11 of the list of issues

39. Article 12 has been one of the most misunderstood provisions of the Convention on the Rights of Persons with Disabilities, and as a result, extensive inquires and studies have been undertaken first by the Kenya National Commission on Human Rights and later by the National Gender and Equality Commission. The reports on these will be disseminated to enable the public to understand the article and to enable the legislative arm of the Government to take necessary action.

40. Although a few Judges have been sensitized by the National Council for Persons with Disabilities to make them aware of this provision, more still needs to be done as a Nationwide sensitization programme targeting all of judicial officials on the same to ensure they apply the law with right information.

41. However, there is progressive understanding of article 12 in courts, as seen in the judgment by Judge Majanja, reference: HCCR APPEAL No. 17 OF 2014 *Wilson Morara Siringi v. Republic of Kenya.*

Access to justice (art. 13)

Reply to the issues raised in paragraph 12 of the list of issues

42. Article 48 of the Constitution of Kenya, 2010 guarantee the right of access to justice by all. The article obligates the State to ensure that if any fee is required, the same shall be reasonable. Article 22 guarantees the right to petition the Court and seek redress for any alleged breach of one's fundamental rights and freedoms. The article dispenses with formal documentation and allows representation by intermediaries or non-State agencies. This ensures that *persons with disabilities* are able to access judicial services either in person or through their authorized representatives. In addition, the *persons with disabilities* Act, 2003 provides for a legal aid scheme. The Regulations made under the *persons with disabilities* Act provides for the right of persons with disabilities to seek judicial intervention in cases where any of the rights protected under the Act is violated or threatened. To facilitate physical and other access, the judiciary has embarked on a scheme:

(a) To ensure that all judicial stations and buildings are accessible by wheelchair and that persons with disabilities secure assistance to access court rooms;

(b) Court stations are obligated as an administrative procedure to ensure that persons with disabilities in need of sign language interpretation are accorded this service.

43. Finally, article 47 of the Constitution guarantees fair administrative action. This is in addition to the equality and non-discrimination guarantees in article 27. Article 35 Guarantees the right of access to information in accessible format. Two Bills are pending in Parliament designed to make provision for freedom of information and data protection.

44. Owing to a recent court case on access to the law courts (*Timothy Wanyonyi v. the Government of Kenya*), a judgment was made for the courtrooms at Milimani to be made accessible. The judiciary has also recruited sign language interpreters to provide services at the high court and in Magistrates courts. The person with disabilities act and consequent amendment provides that there shall be no legal fees on cases touching on the rights of persons with disabilities. The National Action Plan on Accessibility Rights about to be rolled out as mentioned elsewhere has expressed activities to be undertaken in respect to access to justice by persons with disabilities.

Liberty and security of the person (art. 14)

Reply to the issues raised in paragraph 13 of the list of issues

45. Liberty and security of a person – those of "unsound mind" are referred for medical check-up by a psychiatrist and if condition warrants it they are admitted in Mathari referral mental hospital.

46. No forced medical treatment is carried out on citizens because it is against the law. Patients with disability are viewed and treated as everyone else. Adult patients who are unconscious and children are normally accompanied by a relative, neighbour or a person of

good will. In the absence of a person accompanying the patient treatment to save life including surgical procedures are carried out. A conscious patient will always give self-consent. A medical practitioner who colludes with a guardian or a carer to interfere with patients consent form information is liable to prosecution.

47. The Mental Health (Amendment) Bill is awaiting enactment to amend the Mental Health Act to address this issue.

Freedom from exploitation, violence and abuse (art. 16)

Reply to the issues raised in paragraph 15 of the list of issues

48. Efforts are ongoing to establish accessible and inclusive Gender desks in police stations to offer help lines for victims of violence. More importantly communication capacity and correct attitude by officers and modified detention facilities are the next level in the plans to address this.

49. *There has not been specific focus on* children with disabilities, girls and women with disabilities in respect to protection but they are considered to be covered by the common services such as the police desk here above mentioned.

Protecting the integrity of the person (art. 17)

Reply to the issues raised in paragraph 16 of the list of issues

50. Sterilization only takes place with the consent of the woman. No forced sterilization is carried on those with disability as they are protected by the law. The health law prohibits cutting of any organ without a medical reason.

51. Female Genital Mutilation is outlawed in Kenya by a parliamentary legislation for all women including persons with disabilities. To this effect an anti-female genital mutilation act of parliament is in place and being implemented by an established Anti-Female Genital Mutilation Board. A lot have been done by the Government, partners, NGOs, faith-based organizations and community based organizations to create awareness on prevention and mitigation on the effect of female genital mutilation on girls. The Kenya Demographic Housing Survey of 2014 indicates that the rate has reduced from 27 per cent to 21 per cent in the last 2 years.

Liberty of movement and nationality (art. 18)

Reply to the issues raised in paragraph 17 of the list of issues

52. Chapter 3 of the Constitution well provides for this. The National Council for persons with disabilities recently launched a nationwide programme to register all persons with disabilities including at birth or when the Persons with disabilities need it. The reports indicate good progress on this. The programme also includes Health sector to record children born with disabilities who are then registered as such.

Living independently and being included in the community (art. 19)

Reply to the issues raised in paragraph 18 of the list of issues

53. The practice in Kenya has been to move from institutionalization to community-based rehabilitation, which has been spearheaded by the ministry of health and non-

governmental organizations has its pillars as provision of services to persons with disabilities within the communities where they live. The pillars of community-based rehabilitation include health, education, livelihood, empowerment and inclusion. Although some institutions in particular in relation to education still exists in situations where they are the most suitable way of providing services, the long-term goal is to move to community-based rehabilitation.

Personal mobility (art. 20)

Reply to the issues raised in paragraph 19 of the list of issues

54. The Government, through the Association of the Physically Disabled of Kenya has established out posts or centres to deal with provision of assistive devices in Public health facilities up to rural area. Funding for provision of these assistive devices including wheel chairs is prov ded through the National Council for Persons with disabilities.

55. The Government of Kenya has made deliberate efforts to ensure that persons with disabilities are not isolated or segregated due to lack of access to mobility aids. These efforts include: Tax exemption on assistive devices including modified cars, Collaboration with partners including the private sector to ensure persons with disabilities access assistive devices and are not isolated or segregated in the community.

56. On public transport, the traffic police and the National Transport and Safety Authority have been sensitized on the need to ensure public transport vehicles are accessible. The National Action Plan on Accessibility rights is expected to be launched in the first half of the 2015/ 16 FY and this will guide national efforts towards ensuring accessible and inclusive public transport for all.

57. Furthermore, efforts are already at an advanced stage in developing an adjustment order policy. This will promote the principal of reasonable accommodation for persons with disabilities as it will address accessibility to the built environment, public transport services and information.

Respect for private and family life (art. 23)

Reply to the issues raised in paragraph 20 of the list of issues

58. The National Council of Persons with Disabilities is stepping up the process of registration of all children with disabilities in orphanages to enable statistics of such children and therefore plan for them including returning them to family setting.

59. The Government is supporting such children through the cash transfer programme targeting persons with severe disabilities. The aim of the programme is to cushion households from slipping further into poverty.

Reply to the issues raised in paragraph 21 of the list of issues

60. The Government has scaled up mental and psychosocial health care and treatment.

61. The mental health policy is being developed and there is move to repeal the mental health act to align it with the letter and spirit of the Kenya Constitution 2010. All health facilities in the country must provide mental and psychosocial care and treatment to all including those with disability. Drugs stocks have been assured with increasing improvement of quality of care.

Education (art. 24)

Reply to the issues raised in paragraph 22 of the list of issues

62. The Government is providing inclusive education through a number of ways. This includes:

(a) Ensuring schools are governed by the principles of non-discrimination, including explicit prohibitions on discrimination directly or directly against persons with disabilities and especially children with special needs;

(b) Prevention of students from being expelled from school at all levels of education because of their disabilities and learning challenges;

(c) Creation of mechanisms of investigation and redress at the individual school and school district levels for students who are denied access to education;

(d) Provision of training for faculty and administrators at all levels to ensure the respectful treatment of children with disabilities. Provision of pre-service and in-service training to teachers so that they can respond to diversity in the classroom;

(e) Spearheading the revision of national curriculum to become accessible to all students and also ensure that relevant materials are available to support the special education programmes while at the same time ensuring that school buildings are accessible to students with disabilities;

(f) Revision of testing methods to ensure that accommodation is made for students with disabilities;

(g) Government ministries and agencies are in the process of providing information in the public domain in accessible format to learners with special needs in school (Kenyan sign language and Braille);

(h) The National Development Fund for Persons with Disabilities managed by the National Council for Persons with Disabilities, includes assistance in terms of school fees for both Primary / Vocational Education. The children also get assistance in terms of assistive devices, like wheel chairs, callipers, etc. under the same fund, the institutions/organizations/units supporting children with disabilities are also funded;

(i) The Kenya Institute of Curriculum Development continuously engages with stakeholders (classroom teachers) in the formulating and adapting curriculum and learning materials to suit learners with special needs and disabilities;

(j) The Ministry of Education is currently reviewing university programmes to include disability studies elements in the education curriculum. This will facilitate production of graduates who are fully competent in teaching learners with special needs;

(k) The Kenya National Examination Council has established a special needs education section to deal with issues of curriculum evaluation of learners with special needs and disabilities;

(l) Educational assessments centres exist in every county and this act as referral to children with special needs. This reduces the challenges of accessing education for Children with high support needs in rural areas where parents are poor;

(m) The Special needs education policy was adopted in 2009, with key provision to inclusive education. Although the policy has been in place for that long there has not been a supporting legislation but there are proposals in place to amend the education act to give legal basis for the policy and to align it with the Convention on the Rights of Persons with Disabilities.

Health (art. 25)

Reply to the issues raised in paragraph 23 of the list of issues

63. The measures include:

(a) Implementation of policies to ensure that healthcare is provided without discrimination on the basis of one's disability particularly as relates to services for HIV/AIDS, sexual and reproductive health;

(b) Training of healthcare professionals at all levels to ensure the informed and respectful treatment of persons with disabilities seeking medical care, including training in basic sign language;

(c) Amendment of the National HIV/AIDS strategic plan to explicitly address the ways Persons with disabilities who can be vulnerable to the virus, get informed and share information in the correct format, content and communicate appropriately;

(d) Constructive engagements and partnering with organizations that works to meet the health needs of persons with disabilities;

(e) The Government is supporting research in the specific health needs of persons with disabilities, including with respect to HIV/AIDS, and incorporating the findings into National health plans and policy, both from State and non-State actors;

(f) Monitoring implementation and ensuring that there is no form of discrimination by health insurance providers on the basis of disability more so people with long-term mental health impairments;

(g) Mental and Psychosocial health care continue to be under the ministry of Health. Recently, a Disabled Persons Organization made up of, and targeting particularly Persons with psychosocial disability has come into place and has been sensitizing the community on related problems.

Reply to the issues raised in paragraph 24 of the list of issues

64. The National AIDS Council has developed a strategy to address disability issues among women, girls, and young persons with disabilities. The strategy also addresses itself to reproductive health issues including HIV/AIDS and sexually s among Persons with disabilities.

65. All facilities in the country provide Sexual and reproductive health, HIV and STIs care and treatment to all Kenyans including persons with disabilities. Adequate available services are spread out at different levels. In case of reproductive health, family planning services are offered in all facilities including post rape care.

66. Health facilities have incorporated inclusive and accessible testing for HIV/AIDS including for the blind.

67. In the general population HIV incidences have gone down (KDHS). Women with disability are at risk of HIV from intimate partner relationship due to their dependence and vulnerability. Any partner who deliberately infects their partner or fails to disclose their status is likely to be penalised. Condoms are made available to all. However, female condoms are more expensive for the women to afford.

Right to work and employment (art. 27)

Reply to the issues raised in paragraph 25 of the list of issues

68. The rate of employment of Persons with disabilities in the open labour market has increased steadily though this is still below 5 per cent. The public service commission report 2015 indicates that the rate is about 1 per cent. This low level score could be explained by loopholes in the Disability Act 200 which provides for progressive employment of persons with disability in public service. However, there has been a tremendous effort especially by the Government to hire persons with disabilities but this has been hampered by the historical marginalization in education and training. *The Persons with disability amendment Bill of 2012 on review of the Disability Act of 2003 provides for punitive measures for institutions that that will not comply.*

69. To protect Persons with disabilities from discrimination, continuous awareness creation on rights of Persons with disabilities to employment has been mounted in all Ministries, Counties, Departments and Agencies. Online advertising for jobs has been encouraged and positively embraced by employers given its accessibility to all.

70. The Government has commenced Investigation for cases of people dismissed from or denied employment on the basis of disability and provides them with a system of redress to recuperate damages. Other efforts include supporting the critical work of non-government organizations that employ persons with disabilities, organizations who create rehabilitation and vocational training for persons with disabilities.

Furthermore, the Government has establishment of public procurement schemes that give preferences to companies which employ at least a certain percentage of persons in their work force or exclude companies which have discriminated on the basis of disability. Sign Language Interpreters are now employed in public service as a special cadre to ensure inclusion.

71. Promotion of vocational and professional rehabilitation skills for self-employment and entrepreneurship development is availed to Persons with disabilities through Vocational Rehabilitation Centres under the Ministry of Labour, social security and services, other training institution including in the private sector. Furthermore, the National Youth service continues to recruit and train persons with albinism where they get trained in technical skills for employment. NYS was previously categorized as a institution reserved for those seen to be "fit".

72. Through public private partnership, graduate Persons with albinism have continued to get employment in Kenya Commercial Bank.

73. The Gender and equality commission is expected to work out guidelines on equal employment. The Constitution Implementation Commission has already produced a document on disability inclusion in all aspects of the society and especially in employment. The guidelines are in the process of being rolled out. These are areas under focus and it is hoped when addressed, employment will also improve.

Adequate standard of living and social protection (art. 28)

Reply to the issues raised in paragraph 26 of the list of issues

74. The funding for Persons with disabilities through the National Development Fund for Persons with disabilities has been increased for the next financial year 2015/2016. Persons with severe disabilities particularly are expected to be the major beneficiary with more than 50 per cent of the beneficiaries being persons with psychosocial disabilities.

75. The national development fund for persons with disabilities is one of the country flagship projects within the perspective of vision 2030 and from the trend already experienced, government allocation has been growing and will continue to do so. There are no specific plans as to how many persons it should cover within the foreseeable future but the increase in funding will mean increase in the number of people to benefits.

76. The fund is administered in such a way that it has to reach each constituency and that the neediest are the ones who benefit.

77. This fund is also complimented by the National Fund for the Disabled of Kenya (NFDK). The fund supports persons with disabilities for empowerment programmes and development programmes.

Participation in political and public life (art. 29)

Reply to the issues raised in paragraph 27 of the list of issues

78. Whether or not a person is of unsound mind is a matter of legal status declared by a court of competent jurisdiction on the assessment of a medical board appointed under the Mental Health Act. The law does not deprive any person of their legal capacity unless it is established that they are incapable of understanding what they are doing. It is only on that basis that one may not be considered as capable of knowingly participating in the electoral process. However, assisted decision-making is permissible to assist Persons with Disabilities, provided that the decision in issue is their informed and conscious decision, and not the decision of their intermediary. The notion of "unsound mind" is yet to receive conclusive interpretation in relation to legal capacity.

79. Repealing of these sections has not been debated but from the experience of the last elections, Persons with all types of disabilities were allowed to vote even where it called for the need of assistance to do so. This is covered by the legislations which governs the elections in the country. There is a lot of goodwill for political participation based on the new constitution. For instance there are 5 members of parliament with disabilities through affirmative action and seven others who have gone through competitive process. There are county assembly members with disabilities in all counties through the affirmative action whose mandate is to represent the interest of persons with disabilities.

Reply to the issues raised in paragraph 28 of the list of issues

80. Polling stations are generally situated in schools, where rooms that are accessible are preferred to ensure wheelchair users have no challenges of access. Accessible voting booths are provided in each polling station which are low and friendly for wheel chair users. Those voters with disability who experience challenges in using these booths are assisted by Election officials. Blind voters are provided with brailed ballot papers for voting. Deaf voters have little challenges if any at polling stations. Voters with disabilities are generally assisted o vote without queuing so that they don't take long at polling stations.

81. Independent Electoral and Boundaries Commission (IEBC) has conducted a study on how to improve access of Persons with various disabilities to elections and results. The recommendations there from will be helpful when the study report is ready.

82. However, IEBC is still faced with challenges of ensuring access to election related information for persons with disabilities. The voter education materials are still not in accessible format to all. The study report may help improve on this.

83. One major challenge IEBC has faced is the biometric registration of voters without fingers, where sometimes the feet or other parts of the hand like elbow or any part of the hand that is left is used and this however, has ensure inclusion.

C. Special obligations

Statistics and data collection (art. 31)

Reply to the issues raised in paragraph 29 of the list of issues

84. The National Council for Persons with disabilities has the mandate to register persons with disabilities and although there efforts are hindered by lack of resources both human and financial they have a full-fledged department on registration and staff are doing all they can to collect statistics.

85. One type of disability that has extensively been covered in terms of data is the Persons with Albinism who could be about four to five thousands. This is from the National registration exercise that was undertaken in 2013.

86. The Government of Kenya has continued focusing on identifying various gaps in programmes targeting persons with disabilities by comparing what various policies provide for, particularly the Convention provisions and what is actually being implemented. This will be done directly and through partnerships with various stakeholders. Leonard Cheshire is partnering with Economic and Social Research Council, Ukaid, and the Department of Foreign and International Development in implementing a Poverty Alleviate Research Grant known as **"bridging the Gap: Examining Disability and Development in Four African Countries**". This was launched in Nairobi on 29 May 2015. Kenya is one of the target Countries to provide data. The study results will inform the gaps to be filled as we move into future on disability including on data on disability.

International cooperation (art. 32)

Reply to the issues raised in paragraph 30 of the list of issues

87. There has been a measure of involvement of persons with disabilities especially through the umbrella body, United Disabled Persons of Kenya, including on international reporting such as developing briefs for the Conference of the State parties to the Convention on the Rights of Persons with Disabilities, among others. The Government generally participates in activities organized by disabled persons organizations on disability programmes in the Country and beyond. *National implementation and monitoring (art. 33)*

Reply to the issues raised in paragraph 31 of the list of issues

88. The ratification of the Convention on the Rights of Persons with Disabilities in 2008 in Kenya was met with a lot of enthusiasm and different department assumed roles which they have played but which need a legal framework to support. The ministry of labour, social security and Services has overall policy responsibilities while the National Council for Persons with disabilities has some delegated responsibility for implementation of the convention. The Kenya National Commission on Human Rights and more recently the National Gender and Equality Commission are playing a monitoring role.

89. The Kenya National Commission on Human Rights and the National Gender and Equality Commission have been working closely with organizations of persons with disabilities in their monitoring role.